

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.78177 of 2023

Arising Out of PS. Case No.-482 Year-2023 Thana- HARSIDHI District- East Champaran

1. Md. Arshad @ Md. Arshad Alam Son of Amrullah Miya Village -Chadahiya P.S.- Harsidhi, District- East Champaran
2. Md. Shamshad @ Shamshad Saifi @ Shamshad Son of Hasmullah Miya Village -Chadahiya P.S.- Harsidhi, District- East Champaran
3. Amrullah Miya Son of Kurban Miya Village -Chadahiya P.S.- Harsidhi, District- East Champaran
4. Md. Irshad @ Md. Irshad Saifi @ Irshad Alam Son of Hasmullah Miya Village -Chadahiya P.S.- Harsidhi, District- East Champaran
5. Md. Khalil Ahmad @ Khalil Miya @ Khalil Saifi Son of Hadish Miya Village -Chadahiya P.S.- Harsidhi, District- East Champaran

... .. Petitioners

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s	:	Mr. Bimlesh Kumar Pandey, Advocate
For the Opposite Party/s	:	Mr. Tarun Prasad Mandal, APP
For the Informant	:	Mr. Fakhruddin Ali Ahmad, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 10-01-2024 At the outset, learned counsel for the petitioners submits that petitioner no.3 has been arrested during pendency of the application, hence this case on behalf of petitioner no.3, namely, Amrullah Miya has become infructuous. It survives only for petitioner nos. 1, 2, 4 and 5.

2. Heard learned counsel for the petitioners, learned counsel for the informant and learned A.P.P. for the State.

3. The petitioners in the present case are seeking pre-arrest bail in connection with Harsidhi P.S. Case No. 482 of 2023 registered for the offences punishable under Sections 341, 323,



302, 504 and 34 of the Indian Penal Code.

4. It is stated in paragraph '3' that petitioner no.1 has got one criminal antecedent but in the said case he had been acquitted. The said case was in respect of the murder of the son of the informant.

5. Learned counsel for the petitioners submits that so far as other petitioners are concerned, they have got no criminal antecedent.

6. As per the prosecution story, on 28.07.2023 in the midnight, altogether thirty three persons had assembled at the house of the informant and they started abusing the informant. When the informant came out, it is alleged that at the instance of one co-accused Md. Zikrullah Miyan, the accused persons started assaulting the informant along with Md. Arshad by *lathi*, iron rod, etc. It is alleged that because of the assault, the grandson of the informant fell down and became unconscious. He was taken to hospital where he was declared dead.

7. It is submitted in the First Information Report that thirteen persons have been named whereas fifteen-twenty unknown persons are said to have joined the named accused in assaulting the informant's grandson. The postmortem report of the grandson of the informant, however, does not support the manner of occurrence inasmuch as only three injuries have been



found on the body of the deceased and that falsifies the allegations that all the accused persons had assaulted the deceased.

8. Learned counsel further submits that so far as petitioner no.1 is concerned, it is only pointed out at the end of the FIR that he along with others had assaulted, save and accept that indication about the petitioner no.1, there is no more assertion that the overt act was committed by petitioner no.1. So far as other petitioners are concerned, they have not been attributed any specific arms or ammunitions and their cases would squarely be covered and similar to the case of the accused, namely, Md. Zikrullah, Munni Khatoon and Jarina Khatoon, who have been granted privilege of anticipatory in Cr. Misc. No. 76758 of 2023 and Cr. Misc. No. 76526 of 2023. It is also submitted that petitioner nos. 2, 4 and 5 were not accused in the murder case of the son of the informant.

9. Learned A.P.P. for the State and learned counsel for the informant have opposed the prayer for anticipatory bail of the petitioners. In course of argument, however, it is submitted that in course of investigation materials have come against petitioner no.1 but so far as petitioner nos. 2, 4 and 5 are concerned, their cases would stand on similar footing with the co-accused who have been granted privilege of anticipatory bail. Learned counsel



for the informant has pointed out that only yesterday, the learned court below has ordered for issuance of process under Section 82 Cr.P.C, however, this is an admitted position that the petitioners in this case were seeking their remedy before this Court since 24.11.2023 and for no fault on the part of the petitioners, the matter could not be taken up till date.

10. Having regard to the facts and circumstances of the case, the uncontroverted submission on behalf of the petitioner nos. 2, 4 and 5 that there is a general and omnibus allegation against them and their cases would stand on similar footing with the co-accused who have been granted privilege of anticipatory bail, this Court directs that in case of their arrest or surrender within a period of four weeks from today, the petitioner nos. 2, 4 and 5 above named be released on bail in connection with Harsidhi P.S. Case No. 482 of 2023 on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) each with two sureties of the like amount each to the satisfaction of learned Judicial Magistrate-I, Motihari, East Champaran subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

11. And further condition that the court below shall verify the criminal antecedent of the petitioner nos. 2, 4 and 5 and in case at any stage it is found that the petitioner nos. 2, 4 and 5 have concealed their criminal antecedent, the court below



shall take step for cancellation of bail bond of the petitioners. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

12. So far as petitioner no.1 is concerned, since his case has been distinguished and it is stated that materials have also come against him and further he was an accused in the murder case of the son of the informant, though he has been acquitted in the said case, this Court is not inclined to grant privilege of anticipatory bail to the petitioner no.1. His prayer is refused.

13. In case he surrenders and prays for regular bail, his prayer for regular bail shall be considered on its own merit without being prejudiced by the order of this Court.

14. This application stands partly allowed.

(Rajeev Ranjan Prasad, J)

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